

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 373 - HB 868

March 14, 2011

SUMMARY OF BILL: Broadens the offense of first degree felony murder to include the killing of another committed in the perpetration of or attempt to perpetrate the underlying offense of manufacturing, delivering, or selling a controlled substance or possessing a controlled substance with intent to manufacture, deliver, or sell a controlled substance. The offense is punishable by death, life imprisonment without the possibility of parole, or life imprisonment.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$23,100/One-Time
\$257,700/Recurring
\$1,992,700/Incarceration***

Other Fiscal Impact – An average of one offender per year will receive a death sentence. If a capital offender serves an average of 20 years before the sentence is carried out, there will be no significant additional incarceration costs for the capital offender, apart from the execution. The cost of executing each inmate will exceed \$15,000. The cost to the State of capital trials and appeals is substantially higher than for non-capital cases. It is estimated that the additional cost of capital trials and appeals will exceed \$750,000 for each case.

Assumptions:

- According to the Tennessee Bureau of Investigation Crime Reports, there has been an average of 15 murders in each of the past three years involving an offender suspected of using drugs.
- The Department of Correction (DOC) estimates 15 offenders each year who commit a murder involving a controlled substance thereby elevating their conduct to first degree rather than second degree murder and resulting in an additional 34 years on their sentence (an increase from 17 years to 51 years).
- According to the U. S. Census Bureau, Tennessee population growth has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in two additional offenders in the tenth year after the sentence increase is added to time currently served. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 17 offenders. One of the 17 offenders will receive a death sentence.

- According to DOC, 46.4 percent of offenders will re-offend within three years of release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (17 offenders x 46.4% recidivism discount = 8 offenders).
- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The cost per offender at 17 years is \$376,404.74 (\$60.62 x 6,209.25 days). The cost per offender at 27 years (10th year) is \$597,819.29 (\$60.62 x 9,861.75 days). The additional cost of increasing the average sentence length is \$221,414.55 (\$597,819.29 - \$376,404.74). The total operating cost for 9 (17 – 8) offenders is \$1,992,730.95 (\$221,414.55 x 9 offenders).
- Public defenders and district attorneys general will require additional resources for trials and appeals of additional death penalty and life without parole cases. Tennessee Supreme Court Rule 13 requires the appointment of two defense attorneys, with specialized training, in each capital case. Reimbursement rates for appointed defense counsel are higher in capital cases. Due to the nature of capital cases, counsel accepting such cases may be subject to greater limitations on their caseloads, requiring additional attorneys to handle other cases.
- Recurring costs of \$257,700 reflect two additional assistant public defender positions and one assistant district attorney position including \$161,100 (\$53,700 x 3) for salaries, \$74,100 (\$24,700 x 3) for benefits, and \$22,500 for travel, supplies, rent, training, and other related costs.
- One-time costs of \$23,100 for computer equipment, furniture, books, and other related costs for three positions (\$7,700 x 3).
- Tennessee has executed five offenders in the past ten years. The cost of each execution is estimated to be in excess of \$15,000.
- The State incurs substantial out-of-pocket expenses in capital trials, appeals and post-conviction proceedings. These include the costs of appointed counsel, expert witnesses, investigators, and mitigation specialists. These additional costs are estimated to exceed \$750,000.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc